



## **AGRICULTURE, FOOD AND RURAL AFFAIRS APPEAL TRIBUNAL**

### **BOARD OF NEGOTIATION**

### **ANNUAL REPORT**

### **2010-11**

## **Message from the Chair**

I am pleased to present the Annual Report of the Agriculture, Food and Rural Affairs Appeal Tribunal (Tribunal) and the Board of Negotiation (BON) for the year ending March 31, 2011. The report focuses on the Tribunal's achievements for the year.

The Tribunal serves as the adjudicative body for those who feel aggrieved by decisions made under various pieces of legislation under the Ontario Ministry of Agriculture, Food and Rural Affairs. The BON serves as the body that negotiates settlements between parties under certain provisions of the *Environmental Protection Act*.

The Tribunal continues to work hard to carry out its adjudicative mandate and achieve its goals. We recognize the need to provide a fair and effective appeal mechanism to clients who come before us, and have endeavoured to meet clients' needs and expectations in the past year. No matters were brought to the BON in 2010-11.

The Tribunal continues to use a client survey to obtain feedback on the services it provides. The survey is conducted annually among individuals and organizations who participated in proceedings before the Tribunal during the fiscal year. The results of the survey assist the Tribunal in its ongoing efforts to improve the delivery of its services, and to evaluate the Tribunal's performance. I am pleased that the ratings provided by clients in key areas of services we provide remain at high levels.

On behalf of the Tribunal members, I look forward to the challenges ahead and to serving the agriculture and food sectors, as well as rural communities, throughout Ontario.

Yours truly,



Kirk Walstedt  
Chair

# **THE AGRICULTURE, FOOD AND RURAL AFFAIRS APPEAL TRIBUNAL**

The Agriculture, Food & Rural Affairs Appeal Tribunal (Tribunal) is an amalgamation of the Farm Products Appeal Tribunal, the Farm Organizations Accreditation Tribunal, the Ontario Drainage Tribunal, the Crop Insurance Appeal Board, the Farm Tax Rebate Appeal Board and the appeal functions of the Farm Implements Board. Most Tribunal members also serve on the Board of Negotiation (BON) established under the *Environmental Protection Act*.

Constituted under Section 14 of the *Ministry of Agriculture, Food and Rural Affairs Act*, the mandate of the Tribunal is to provide an independent, accessible avenue of appeal on a variety of agricultural issues under the following provincial statutes and have them heard by an impartial and knowledgeable Tribunal: *Agricultural Employees Protection Act, 2002*; *Agricultural Tile Drainage Installation Act*; the *Animals for Research Act*; the *Animal Health Act, 2009*; the *Assessment Act*; the *Beef Cattle Marketing Act*; the *Commodity Board Members Act*; the *Crop Insurance Act (Ontario), 1996*; the *Drainage Act*; the *Farm Implements Act*; the *Farm Registration and Farm Organizations Funding Act, 1993*; the *Food Safety and Quality Act, 2001*; the *Grains Act*; the *Livestock Community Sales Act*; the *Livestock and Livestock Products Act*; the *Livestock Medicines Act*; the *Livestock, Poultry and Honey Bee Protection Act*; and the *Ministry of Agriculture, Food and Rural Affairs Act* (for appeals of decisions made under the *Farm Products Marketing Act* and *Milk Act*).

The Tribunal is part of a regulatory process where decisions made by other bodies can be appealed or where applications and complaints can be heard, and where justice can be rendered after a proper hearing. It is an accessible venue that allows due process to occur.

Established under the authority of the *Environmental Protection Act*, the mandate of the BON is to negotiate a settlement of a claim where a contaminant is causing or has caused injury or damage to livestock or to crops, trees or other vegetation. Where a claimant has requested an investigation by the Minister of the Environment and a report is filed, and where the claimant and the person responsible for the injury or damage are not able to reach a settlement of the claim, either party may refer the matter to the BON for settlement. Settlements negotiated by the BON are non-binding.

Some members of the Tribunal are also appointed to a special roster of members who may hear complaints and applications under the *Agricultural Employees Protection Act, 2002*.

The Tribunal's hearing room and offices are located in the Government Building at One Stone Road West, Guelph. The Tribunal also conducts hearings throughout Ontario, as necessary, to improve its accessibility to all parties that appear before it.

## **MISSION STATEMENT**

Provide a fair and impartial hearing and decision process for those who are aggrieved by a direction, policy, order or decision, or who require the resolution of a dispute pursuant to legislation that falls under the mandate of the Agriculture, Food and Rural Affairs Appeal Tribunal.

## **VALUES/OPERATING PRINCIPLES**

The Tribunal values:

- 1) Finding facts from evidence provided, leading to clearly reasoned and expressed decisions.
- 2) Respect and consideration.
- 3) Fairness and accessibility.
- 4) Continuous professional development.
- 5) Adherence to principles of the adjudicative process.
- 6) Endeavouring to reach consensus in the decision-making process.

### **What Can BeAppealed To the Agriculture, Food and Rural Affairs Appeal Tribunal?**

Any order, direction, decision or policy of the local marketing boards, or of a Director made under the *Farm Products Marketing Act* or the *Milk Act* may be appealed to the Tribunal. Regulations of commodity boards may also be appealed to the Tribunal. Orders, directions or decisions of the Ontario Farm Products Marketing Commission that apply specifically to the aggrieved person, a group of persons of which the aggrieved person is a member or with respect to a particular dispute or incident involving the aggrieved person can also be appealed to the Tribunal. However, regulations, policies, orders, directions or decisions of the Commission that are of general application are not appealable to the Tribunal.

A producer or commodity board who is of the opinion that a member of the commodity board has contravened the *Commodity Board Members Act* may apply to the Tribunal to determine whether or not the member has contravened the Act.

A decision that results in the refusal to issue a licence, the refusal to renew a licence, the suspension or revocation of a licence issued under the *Agricultural Tile Drainage Installation Act*, the *Animals For Research Act*, the *Animal Health Act, 2009*, the *Grains Act*, the *Food Safety and Quality Act, 2001*, the *Livestock and Livestock Products Act*, and the *Livestock Medicines Act* can be appealed to the Tribunal. Under the *Beef Cattle Marketing Act*, the Tribunal can hear appeals from decisions of a Director to not include or remove plants from a list of plants that comply with the Act and regulations.

Under the *Drainage Act* the Tribunal's jurisdiction ranges from complaints about assessment and allowances, to requests for modification of the drainage works including complaints of quality of construction and directing a municipal council to proceed with drainage works after a petition for drainage has been filed. Its powers relate more to the operational or remedial provisions of the Act.

Under the *Farm Registration and Farm Organizations Funding Act, 1993*, the Tribunal accredits general farm organizations; determines the eligibility of a Francophone farm organization to receive special funding, and decides on applications for exemption from registration and/or payment as required by the Act where individuals or farm businesses object to payment and/or registration because these actions would be in contravention of their genuinely held religious convictions and/or beliefs.

Under the *Assessment Act*, the Tribunal hears appeals regarding the eligibility of agricultural properties for the farm property class designation.

Under the *Crop Insurance Act (Ontario), 1996*, the Tribunal has the mandate to resolve all disputes arising out of the adjustment of loss under contracts of insurance between AgriCorp and an insured person, provided the person has filed an appeal within the time allowed. It can also rule on whether or not a person qualifies for a contract of insurance, if AgriCorp has denied coverage.

The Tribunal hears applications and appeals arising out of the application of the *Farm Implements Act*. Applications may arise from disputes between manufacturers or distributors and dealers of farm equipment, or between an end buyer and a dealer, distributor, or manufacturer. Appeals may arise from a decision of a Director related to the registration of a dealer or distributor.

Under the *Livestock, Poultry and Honey Bee Protection Act* the Tribunal may be called upon to determine the cause of predator damage to livestock and poultry (wolf or non-wolf).

The Tribunal has the authority to hear complaints and applications under the *Agricultural Employees Protection Act, 2002*. These may involve requests for access to employees on properties controlled by the employer or complaints regarding non-compliance with the Act.

### **Who Can Appeal**

An appellant can be a landowner, a producer, a processor, a consumer, an employee, a transporter, a dealer, a manufacturer, a distributor, an unincorporated association or any other person or group of individuals who has a statutory right to appeal or make application to the Tribunal.

### **Powers of the Minister**

Within 30 days after receipt by the Minister of a decision of the Tribunal made under the *Ministry of Agriculture, Food and Rural Affairs Act* (arising from appeals of decisions made under the *Farm Products Marketing Act* or the *Milk Act*) and the reasons therefore, if any, or within such longer period as may be determined by the Minister within such 30-day period, the Minister may:

- a) confirm, vary or rescind the whole or any part of the decision,
- b) substitute for the decision of the Tribunal such decision as the Minister considers appropriate; or

- c) by notice to the Tribunal require the Tribunal to hold a new hearing of the whole or any part of the matter appealed to the Tribunal and reconsider its decision.

## Powers of the Courts

Decisions of the Tribunal with respect to licensing issues under the *Agricultural Tile Drainage Installation Act*, the *Animals For Research Act*, the *Beef Cattle Marketing Act*, the *Grains Act*, the *Livestock Community Sales Act*, the *Livestock and Livestock Products Act* and the *Livestock Medicines Act* may be appealed to the Superior Court of Justice (Divisional Court) in accordance with the rules of the Court. Decisions of the Tribunal under the *Assessment Act* and the *Farm Implements Act* may be appealed to Divisional Court on matters of law. There are also limited appeals to the Referee under the *Drainage Act*. All decisions of the Tribunal may be subject to judicial review.

## 2010-11 Highlights

### ***Ministry of Agriculture, Food and Rural Affairs Act (Appeals of Decisions made under Farm Products Marketing Act or Milk Act)***

In 2010-11, the Tribunal completed a total of four hearings and nine pre-hearing conferences of decisions made under the *Farm Products Marketing Act* and/or the *Milk Act*. The Tribunal denied three of the appeals heard. The decision of fourth hearing will be released in the next fiscal year. One decision from a hearing held in 2009-10 was also released in 2010-11. This appeal was denied.

The Tribunal received two requests for a review in 2010-11 of decisions made under these statutes. One request was denied and the other is still under consideration.

Number of decisions by commodity is as follows:

Chicken	1
Dairy	1
Tobacco	1
Turkey	1
<b>TOTAL</b>	<b>4</b>

### ***Crop Insurance Act (Ontario), 1996***

In 2010-11 the Tribunal received two appeals from decisions of AgriCorp denying a producer's claim of insurance. One matter involved a claim on a crop of organic soybeans. This matter was resolved between AgriCorp and the claimant resulting in the appeal being withdrawn. The second matter involved a claim on a crop of grapes. The appeal was received in late February 2011 and will be scheduled to be heard in 2011-12.

### ***Farm Registration and Farm Organizations Funding Act, 1993***

The *Farm Registration and Farm Organizations Funding Act, 1993* established a system which provides general farm organizations with a reliable source of funding. Under the Act,

farm businesses with a gross farm income of \$7,000 per annum or higher are required to register and to direct an annual registration fee to a farm organization that is accredited under the Act. Provision is made for individuals to be granted exemptions from registering and/or making payment under the Act on the basis of religious beliefs and convictions.

In 2010-11, the Tribunal received 118 applications for a religious exemption under the Act. Each valid application was forwarded to the accredited farm organizations and reviewed by the Tribunal. When, after review of an application, it is not clear to the Tribunal that an application is based on a genuinely held religious belief or conviction, the Tribunal schedules a hearing. The Tribunal also holds a hearing if there is an objection by one of the accredited farm organizations. No hearings were held in 2010-11.

In 2010-11, the Tribunal granted a total of 110 religious exemptions – 95 exemptions from both registering and paying the prescribed fee, 14 exemptions from paying the fee only, and one exemption from registering only. One application received was subsequently withdrawn. One application was dealt with by a hearing held in the previous fiscal year for which a decision was issued in 2010-11. This application was denied. The Tribunal did not consider six applications as the applicants were not required to register their farm businesses or pay the prescribed fee since their businesses did not meet the \$7,000 per annum income threshold.

### ***Drainage Act***

The Tribunal provides a readily accessible forum for appeals and applications under the *Drainage Act*. Tribunal hearings are held throughout Ontario, usually in the municipal office of the municipality where the appeal is filed.

The Tribunal held 16 hearings in 2010-11. The Tribunal also issued 16 decisions in 2010-11. Fifteen of those decisions were from hearings held in 2010-11 while one decision was from an application received in 2009-10 under Section 58(4) of the Act. Of the 16 decisions issued in 2010-11, 10 decisions denied the appeals, four granted the appeals in part, one denied the appeal in part, and one decision set aside the Engineer's Report. The decision from one hearing held at the end of 2010-11 will be issued in the next fiscal year. Appeals relating to three drainage matters received by the Tribunal were subsequently withdrawn in 2010-11. The Tribunal also received three requests for review of drainage decisions in 2010-11. All were denied.

The Tribunal's practice is to hold a single hearing for all appeals made with respect to a single drainage works. Typically, there is more than one appellant on drainage appeals.

Summary of appeal types heard is listed below:

Engineer's Report & Assessment (Sections 48 & 54)	9
Engineer's Report only (Section 48)	0
Assessment only (Section 54)	5
Application to Correct Error in Engineer's Report (Section 58(4))	1
Application to procure report to vary assessments (Section 76)	0
Failure to proceed on petition (Section 5)	0

Quality of Construction (Section 64)	1
Reconsideration Requests	3
Withdrawn/Cancelled/Postponed	3
<b>TOTAL</b>	<b>22</b>

#### ***Agricultural Employees Protection Act, 2002***

In 2006-07 the Tribunal received its first complaint under the *Agricultural Employees Protection Act, 2002 (AEPA)*. A pre-hearing conference was held to deal with several issues raised by the parties. Two parties to the appeal subsequently took the Tribunal's decisions to the Divisional Court for judicial review. The Divisional Court rendered its decision in early 2008. The Union applicant then sought leave to appeal the Divisional Court's finding that there was no reasonable apprehension of bias on the part of the Tribunal. The Ontario Court of Appeal granted the Union leave to appeal. In order to remove any potential concerns around the matter of apprehension of bias, in 2009 the Tribunal reconstituted the panel to hear the matter. A settlement was reached with the Union applicant and the appeal to the Court of Appeal was withdrawn. Whether the complainants wish to proceed with a hearing is dependent upon a number of factors, including the outcome of a challenge to the Supreme Court of Canada regarding the *AEPA*.

#### ***Assessment Act***

The Tribunal hears appeals referred to it by the Assessment Review Board regarding the eligibility of properties for the farm property class tax rate. Properties which receive the farm property class are assessed at 25% of the residential tax rate.

In 2010-11, the Tribunal heard 49 farm property class appeals over three days. The farm property class was granted 36 times and denied 13 times. Decisions from 11 appeals heard in the previous year were also issued in 2010-11. Of those 11 appeals, 8 were granted and 3 denied.

#### ***Farm Implements Act***

The Tribunal held two hearings under this statute in 2010-11. One hearing required 7 days to hear the liability issues pertaining to the matter. The appeal was granted in part. The damages portion of this hearing has yet to be heard. The second hearing was started in 2010-11 and will continue to be heard in the next fiscal.

#### ***Food Safety and Quality Act, 2001***

The Tribunal received one appeal under this Act in 2010-11. Two days of hearing were held on this matter in 2010-11, with a third day scheduled to be heard in the next fiscal year.

## HISTORIC DATA

### History of Appeals under the *Farm Products Marketing Act* and the *Milk Act* – last five years

From	To	Appeals	Granted	Denied	Granted In Part with Conditions	No Jurisdiction Dismissed or Withdrawn	Held Over
Apr 2006	Mar 2007	11	0	7	1	2	1
Apr 2007	Mar 2008	10	1	1	0	6	2
Apr 2008	Mar 2009	12	0	3	0	4	5
Apr 2009	Mar 2010	10	1	7	2	0	-
Apr 2010	Mar 2011	13	0	3	0	3	7

### Recent History of Applications for Religious Exemption

	2010-11	2009-10	2008-09	2007-08	2006-07	2005-06
Applications	118	114	75	72	131	136
Applications Withdrawn/Dismissed	7	7	0	0	10	8
Approved Without Hearing	110	106	70	69	121	127
Number of Hearings	0	1	0	0	1	1
Approved after Hearing	0	0	0	0	0	0
Denied after Hearing	1	1*	0	0	1	1
Adjourned	0	0	0	0	0	0
Total Approvals	110	106	70	69	121	127
Payment & Registration	95	102	66	67	118	113
Payment Only	14	4	4	2	2	12
Registration Only	1	0	0	0	1	2

\* Decision issued in 2010-11

## THE BOARD OF NEGOTIATION

Most members of the Agriculture, Food and Rural Affairs Appeal Tribunal are also appointed to the Board of Negotiation (BON), established under the *Environmental Protection Act*, to negotiate with the parties involved where a person complains that a contaminant is causing or has caused damage to livestock, crops, trees or other vegetation.

Where crops, trees, other vegetation and/or livestock are damaged by the release of a contaminant, the affected parties may ask for the BON to attempt to settle any claim arising from the incident.

No parties asked to appear before the BON in 2010-11.

## **FINANCIAL PERFORMANCE**

The Tribunal and the BON operate under a budget allocated by the Ontario Ministry of Agriculture, Food and Rural Affairs and as such do not have their own audited financial statements. The Tribunal and BON resource requirements are incorporated under the ministry's business plan.

### **Operating Expenditures**

	<b>Budget 2010-11</b>	<b>Actual 2010-11</b>	<b>Variance</b>
<b>Salaries &amp; Wages</b>	\$197,700	\$216,574	+\$ 18,874
<b>Employee Benefits</b>	25,400	30,337	+ 4,937
<b>Transp. &amp; Communications</b>	49,000	41,560	- 7,440
<b>Services</b>	166,800	264,915	+ 98,115
<b>Supplies &amp; Equipment</b>	1,000	1,081	+.081
<b>TOTAL</b>	\$439,900	\$554,466	+\$114,567

In 2010-11, the Tribunal operated approximately 26% over its budgeted allocation. However, the shortfall was covered through allocations from the Ministry of Agriculture, Food and Rural Affairs. Costs attributed to services for conducting approximately 44 days of Tribunal hearings were 58.82% over budget for 2010-11 reflecting an insufficient allocation for the amount of work necessary for panels to hear the appeals and render decisions. The Tribunal was able to achieve some cost savings in 2010-11 in the area of transportation and communications as a result of the location of hearings, and the selection of panel members for those hearings that minimized the need for overnight accommodations and allowed members to carpool where possible.

## **STAFF RESOURCES**

The ministry has three full-time employees to support and provide services to the Tribunal/BON. The positions are two Tribunal Coordinators, and a Bilingual Administrative Service Representative. The ministry provides administrative and financial support through the Business Services Branch, Research and Corporate Services Division. Legal services to the Tribunal/BON are provided by the Ministry of Attorney General through the Ministry's Legal Services Branch.

# OPERATIONAL PERFORMANCE

## *Expected Outcomes:*

- Efficient decision making and timely release of decisions.
- Confidence in Tribunal by participants in the appeal process.

### 1. Timeliness for Releasing Written Decisions after Hearings

#### *Milk Act and/or Farm Products Marketing Act*

Date	Average Days to Release Decision	Range of days	Number/percent over 20 days
Fiscal 2010-11	31	7 - 73	2/4 (50%)
Fiscal 2009-10	56	1 - 203	6/9 (66%)
Fiscal 2008-09	33	15 - 60	4/6 (67%)
Change	Minus 25 days		

#### *Crop Insurance Act (Ontario), 1996*

Date	Average Days to Release Decision	Range of days	Number/percent over 30 days
Fiscal 2010-11	-	-	-
Fiscal 2009-10	23	23 - 23	0
Fiscal 2008-09	40	8 - 72	5/6 (83%)
Change	N/A		

#### *Drainage Act*

Date	Average Days to Release Decision	Range of days	Number/percent over 30 days
Fiscal 2010-11	14	3 - 57	1/15 (.06%)
Fiscal 2009-10	35	7 - 97	3/6 (50%)
Fiscal 2008-09	37	5 - 74	6/11 (55%)
Change	Minus 21 days		

#### *Farm Implements Act*

Date	Average Days to Release Decision	Range of days	Number/percent over 30 days
Fiscal 2010-11	142	-	1/1 (100%)
Fiscal 2009-10	54	8 - 100	1/2 (50%)
Fiscal 2008-09	-	-	-
Change	Plus 88 days	-	-

## ***Food Safety and Quality Act, 2001***

<b>Date</b>	<b>Average Days to Release Decision</b>	<b>Range of days</b>	<b>Number/percent over 30 days</b>
<b>Fiscal 2010-11</b>	-	-	-
<b>Fiscal 2009-10</b>	<b>38</b>	<b>30 - 43</b>	<b>2/3 (67%)</b>
<b>Fiscal 2008-09</b>	<b>46</b>	<b>46 - 46</b>	<b>2/2 (100%)</b>
<b>Change</b>	<b>N/A</b>	-	

### **Notes:**

1. For performance tracking purposes, the date a decision is released is used to designate the fiscal year in which it is tracked, rather than the date of the hearing.

## **2. Client Satisfaction**

<b>Tribunal Survey Results</b>	<b>2010**</b>	<b>2009*</b>	<b>2008</b>	<b>2007</b>
<b>Overall Satisfaction Rate – key questions*, **</b>	<b>82.6%</b>	<b>81.5%</b>	<b>90.2%</b>	<b>81.7%</b>
<b>Number of Questions with Greater than 80% Satisfaction</b>	<b>13/20</b>	<b>13/19</b>	<b>13/16</b>	<b>8/16</b>

\* Survey questions changed and increased from 16 to 19 in 2009

\*\* Survey questions modified and increased from 19 to 20 in 2010. Rating scale was also modified in 2010 from unsatisfactory, needs improvement, satisfactory, good and excellent to very satisfied, satisfied, neutral, dissatisfied and very dissatisfied.

In 2010-11, changes to the rating scale for the annual client survey were made to reflect government standards. As a result, survey questions were also modified to reflect the use of the required rating scale while maintaining the intent to seek feedback from parties to hearings in four key areas – access to information from the Tribunal, the appeal process, the hearing process and the decision. The results from the client survey are captured in the performance measures section below and are used to evaluate the performance of the Tribunal against its function, commitments and strategies. Due to the change in questions over the past two years and the change in the rating scale between 2009 and 2010, direct comparison of survey results from previous years cannot be made. However, the Tribunal/BON target is still to achieve an 80% satisfaction rate.

## **3. Performance Measures and Targets**

### **Access to Information**

95.3% of survey respondents who accessed the Tribunal's website rated the information found on the website as neutral or higher with 66.7% of that group indicating they were either satisfied or very satisfied with the information. 25.0% of the respondents indicated the question about the Tribunal's website was not applicable to them suggesting those respondents did not use the Tribunal's website.

87.5% of respondents rated the response time of staff to information requests as neutral or higher with 59.1% of respondents indicating they were either satisfied or very satisfied with the response time.

#### Appeal Process

96.5% of respondents rated the response time for the acknowledgement of their appeal as neutral or higher with 78.6% of those indicating they were either satisfied or very satisfied with the response time. 85.8% of respondents indicated they were neutral to very satisfied with the selection of hearing dates.

#### Hearing Process

Overall, respondents were quite satisfied with the hearing process provided by the Tribunal. 92.6% of respondents were neutral to very satisfied with the location of Tribunal hearings, and all those who responded to the question were neutral to very satisfied that the location accommodated persons with disabilities.

Over 80% of respondents (81.4% to 89.3%) were neutral to very satisfied with the process and timing for the exchange of hearing documents between parties in advance of the hearing; information about the hearing process outlined by the Chair at the start of the hearing; respect and consideration given to participants at the hearing; types of questions asked by the panel; and the overall conduct of those in attendance at the hearing.

75% to 78.5% of respondents rated as neutral to very satisfied information provided about the hearing process in advance of the hearing; the level of industry specific knowledge displayed by panel members; and the impartiality displayed by panel members at the hearing.

#### The Decision

71.5% of the respondents were neutral to very satisfied that the hearing decision reflected the evidence presented at the hearing and that the decision reflected the impartiality of the panel, while only 64.3% were neutral to very satisfied with the reasoning in the decision.

The Tribunal's target to release decisions within 30 days of completion of a hearing improved in 2010-2011. 82.1% of respondents were neutral to very satisfied with the timeliness of the release of the decision, which is up from a satisfactory rating of 76.6% in 2009-2010. Significant improvements were made in the average days to release decisions under the *Drainage Act* in 2010-11 (average of 14 days compared to 35 days in 2009-10) and decisions for appeals under the *Ministry of Agriculture, Food and Rural Affairs Act* (average of 31 days in 2010-11 compared to 56 days in 2009-10). While the Tribunal has made improvements in the timelines for releasing decisions under these two Acts, some decisions made by the Tribunal took more than 30 days to be issued. One decision made under the *Farm Implements Act* required 142 days to release due to the amount of evidence and materials that required consideration following seven days of hearings, the nature of the issues before the Tribunal, and the amount of time required for the writing of the decision.

Overall, 82.6% of survey respondents were neutral to very satisfied with the Tribunal's appeal process.

The Tribunal/BON also monitors the number of days between the receipt of an appeal, application or complaint to the release of the decision. It does not set performance targets in this regard as delays in setting hearing dates are largely due to external factors.

## REPRESENTATION AT TRIBUNAL HEARINGS

In 2010-11, Tribunal staff looked at the proportion of parties appearing before it who used legal counsel or some other agent, and the proportion of parties who represented themselves. This was a follow up analysis to a study initiated in 2002.

### *Ministry of Agriculture, Food and Rural Affairs Act*

For appeals heard under the *Ministry of Agriculture, Food and Rural Affairs Act* (Appeals of decisions made under the *Milk Act* or *Farm Products Marketing Act*), the proportion of appellants using legal counsel over the period 2002-2010 has increased to 51.5% versus 35.7 % over the period 1992-2001. In 2010, 75% of the appellants were represented by legal counsel. The proportion of respondents using legal counsel versus representing themselves continues to increase as well. While 62.6% of respondents on average used legal counsel from 1992 -01, this percentage has increased to 77.8% from 2002-10.

Year	<i>Ministry of Agriculture, Food and Rural Affairs Act</i>					
	Counsel	Agent	Self	Counsel	Agent	Self
<b>2002</b>	57.1%	0.0%	42.8%	71.4%	14.3%	14.3%
<b>2003</b>	53.8%	0.0%	46.2%	69.2%	0.0%	30.8%
<b>2004</b>	30.0%	0.0%	70.0%	60.0%	0.0%	40.0%
<b>2005</b>	45.5%	0.0%	54.4%	81.8%	18.2%	0.0%
<b>2006</b>	40.0%	40%	20.0%	60.0%	20.0%	20.0%
<b>2007</b>	100%	0.0%	0.0%	100%	0.0%	0.0%
<b>2008</b>	20%	0.0%	80.0%	80.0%	0.0%	20.0%
<b>2009</b>	42.0%	5.0%	53.0%	78.0%	0.0%	22.0%
<b>2010</b>	<b>75.0%</b>	<b>0.0%</b>	<b>25.0%</b>	<b>100.0%</b>	<b>0.0%</b>	<b>0.0%</b>
<b>2002-10 Average</b>	<b>51.5%</b>	<b>5.0%</b>	<b>43.5%</b>	<b>77.8%</b>	<b>5.8%</b>	<b>16.3%</b>
<b>1992-01 Average</b>	35.7%	15.7%	48.5%	62.6%	0.6%	36.8%

### *Crop Insurance Act (Ontario), 1996*

The Tribunal hears relatively few appeals under the *Crop Insurance Act (Ontario), 1996*. In general, insured growers prefer to either represent themselves or be represented by another insured grower with a similar appeal. AgriCorp, an agency of government, is the respondent in all crop insurance appeals. Generally, AgriCorp staff represents the

agency. There was an increase in the use of legal counsel by appellants in the eight-year period 2002-2010, relative to the previous five-year period 1997-01.

Crop Insurance Act (Ontario) 1996						
Year	Percentage appellants represented by:			Percentage respondents represented by:		
	Counsel	Agent	Self	Counsel	Agent	Self
2007	33.33%	0.0%	66.67%	42.86%	0.0%	57.14%
2008	14.3%	0.0%	85.7%	0.0%	0.0%	100.0%
2009	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%
2010	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
2002- 2010 <i>Average</i>	23.86%	5.45%	58.20%	29.11%	0.0%	58.40%
1997- 2001 <i>Average</i>	13.9%	54.4%	31.7%	28.6%	0.0%	71.4%

### *Drainage Act*

For appeals heard under the *Drainage Act*, for the most part appellants represented themselves both in the eight-year period 2002-10 and the previous five-year period 1997-01. Where a representative was used, there was no clear preference for either agents or legal counsel in either time frame. Municipalities, the respondents in these matters, normally had the engineer who prepared the report under appeal defend the report; on occasion legal counsel was retained. For this analysis, where both legal counsel and an engineer were used, this was recorded as representation by legal counsel, not by an agent.

Drainage Act						
Year	Percentage appellants represented by:			Percentage respondents represented by:		
	Counsel	Agent	Self	Counsel	Agent	Self
2002	0.0%	40.0%	60.0%	26.7%	73.3%	0.0%
2003	18.2%	0.0%	81.8%	18.2%	81.8%	0.0%
2004	20.0%	20.0%	60.0%	0.0%	100.0%	0.0%
2005	0.0%	42.9%	57.1%	0.0%	100.0%	0.0%
2006	27.3%	0.0%	72.7%	14.3%	85.7%	0.0%
2007	20.83%	12.50%	66.67%	21.43%	71.43%	7.14%
2008	7.7%	23.1%	69.2%	15.4%	61.5%	23.1%
2009	12%	12%	76%	33%	0.0%	67%
2010	12.50%	12.50%	75.00%	20.00%	80.00%	0.00%
2002- 2010 <i>Average</i>	13.17%	18.11%	68.72%	16.56%	72.64%	10.80%
1997- 2001 <i>Average</i>	11.4%	11.4%	77.3%	12.2%	84.7%	3.1%

No analysis was undertaken for parties making appeals or applications under the *Farm Registration and Farm Organizations Funding Act, 1993* or the *Assessment Act* as most parties are self represented. The Tribunal normally receives no more than one or two appeals per year under other statutes.

## MEMBERS 2010 - 11

Name	Description	Original Appointment	Appointment Expiry Date
Claire Belluz, Thunder Bay (Member)	Fruit and vegetable grower	Feb 10, 2006	Feb 9, 2014
Ken Benson, Burlington (Member)	Former Employee of Large Farm Implements Manufacturer	June 20, 2007	June 19, 2012
Mary Field, Port Dover (Member)	Former producer of purebred swine; former school teacher	May 21, 2004	May 29, 2012
Douglas Flook, Chatham (Member)	Grower of cash crops and vegetables	Feb 11, 1998	Feb 6, 2014
Ron Gelderland, Ridgetown (Member)	Retired farmer; former Drainage and Road Superintendent	Feb 16, 2005	Jan 15, 2013
Cor Kapteyn, Phelpston (Vice Chair)	Broiler breeder and cash crop farmer	Apr 11, 2006	Apr 10, 2014
Euclid Mailloux, Stoney Point (Member)	Cash crop grower	May 25, 2004	May 15, 2012
Corry Martens, Iroquois (Member)	Beef producer; former dairy producer	Aug 11, 2004	June 12, 2012
Tim Mousseau, South Woodslee (Member)	Certified Engineering Technician	June 17, 2009	June 16, 2011
John O'Kane, Brampton (Vice Chair)	Lawyer	Apr 11, 2006	Apr 10, 2014
Denis Perrault, Navan, (Member)	Dairy farmer who also grows cash crops and grapes; vintner	Jun 2, 2004	May 15, 2012
Marthanne Robson, Ottawa (Vice Chair)	Lawyer, mediator	Nov 15, 2006	Nov 14, 2011
John Rudics, Woodbridge (Member)	Consultant on dairy processing; retired food processor	Dec 7, 2005	Dec 6, 2013
Jane Sadler Richards, Ailsa Craig (Member)	Consultant; crop scientist	May 12, 2004	May 15, 2012
William Schaefer, Kirkton (Member)	Retired Veterinarian	Jun 14, 2005	July 8, 2013
Robert Scouller, Guelph (Member)	Consultant in field of labour relations	Jul 10, 2003	June 21, 2014
Richard Smelski, Shakespeare (Member)	Hog producer	June 20, 2007	June 19, 2012
Enio Sullo, Chatham (Member)	Engineer	May 6, 2009	May 5, 2011
Gene Trotman, Ottawa (Vice Chair)	Lawyer	Jul 15, 2005	Oct 28, 2013
Sharon Weitzel, Tavistock (Member)	Retired dairy farmer; crop grower	Dec 13, 2006	June 21, 2014
Kirk Walstedt, Maidstone, (Chair)	Lawyer	Nov 3, 2004	May 13, 2013
Jack Young, Gravenhurst (Vice Chair)	Engineer; land surveyor	Dec 22, 1999	Apr 11, 2014
Paula Lombardi, London (Vice Chair)	Lawyer	Dec 10, 2008	Nov 23, 2013
Frank Handy, Toronto (Vice Chair)	Lawyer	Feb 25, 2009	Feb 24, 2011
Susan Whelan, Amherstburg, (Vice-Chair)	Lawyer	Feb 3, 2010	Feb 2, 2012

## **RECRUITMENT ACTIVITY**

For the period April 1, 2010 to March 31, 2011, Chair, Kirk Walstedt, and Vice-Chair, Paula Lombardi, were both reappointed to the Tribunal and Board of Negotiation during the fiscal year for a term of 3 years.